

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 18244 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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RUDRESH B. PANDYA - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR BIREN A VAISHNAV for Petitioner(s) : 1,
MS SANDHYA NATANI AGP for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 2.
MR DS VASAVADA for Respondent(s) : 3,
None for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 08/08/2007

ORAL JUDGMENT

Heard learned advocate Mr. HJ Nanavati for

learned advocate Mr. BA Vaishnav on behalf of the petitioner, learned AGP Ms. Sandhya Natani appearing for the respondent no. 1 and 2, learned advocate Mr. DS Vasavada appearing for the respondent no. 3 and 4.

In the present petition, petitioner has challenged the order of termination dated 4/7/2007 and consequential order dated 19/7/2007 by respondent no. 3, which is at Annexure H and Annexure J.

The brief facts of the present petition are as under:

According to petitioner, he is possessing educational qualification of B.A.M.S. from Gujarat Ayurvedic University, Jamnagar. He was first in the College in first year, second year and third year B.A.M.S.

From 1/1/2004 to 31/12/2004, for internship, he worked six months at Akhandanand Hospital, Ahmedabad, three months at Government Ayurvedic Clinic at Village Makwa, District Kheda and three months at Community Health Center at Muli, District Surendranagar.

On 8/1/2005 to 10/12/2005, he joined and worked as Resident Medical Officer at Shree Rang Avadhoot Hospital, Nareshwar, Karajan Taluka District Vadodara. On 23/3/2006, he joined at Sujivan Clinic, Ayurvedic Hospital, run by Dr. Tapan Vaidya and he worked there till the date of interview. The aforesaid experience

as narrated by the petitioner prior to date of interview.

On 1/7/2006, Shri Ayurvedic Vikas Mandal, Lodra invited application by giving advertisement in Gujarat Newspaper 'Sandesh' for the post of Resident Medical Officer (Ayurved) and other posts.

On 24/3/2007, the petitioner applied for the post in question and he was called for an interview before the Selection Committee, consisting of representative of Management, two representatives of Government and Principal of the College.

According to the petitioner, after due scrutiny and examination of the papers, all the proceedings of the interview were sent to the respondents.

On 4/5/2007, the respondent no. 2 approved selection of petitioner. On 8/5/2007, after getting approval from Government, the petitioner was appointed as Resident Medical officer (Ayurved) with years probation and was receiving the salary from the Government as the College is a grant-in-aid institution.

On 4/7/2007, the respondent no. 2 directed the respondent No. 3 that petitioner is not having sufficient experience as required, therefore, his appointment is required to be cancelled forthwith and approval granted by Government is stand cancelled.

On 12/7/2007, the respondent no. 3 issued a notice to show cause as to why service of the petitioner should not be terminated as the Government has interpreted the working experience, which does not fulfill the requirement of advertisement or rules. The petitioner made an application to respondent no. 4 by paying Rs. 20/- to supply eleven documents and he received the same from respondent no. 4.

After receiving aforesaid documents, according to the petitioner, he has no other option except to challenge the order dated 4/7/2007 passed by respondent no. 2.

According to petitioner, the Health & Family Welfare Department, Government of Gujarat issued a notification under Art. 309 of the Constitution of India, known as 'Resident Medical Officer (Ayurved) Recruitment Rules, 1987, some conditions are prescribed therein, which is as under:

"Now more than 35 years of age, should possess a degree in Ayurved from Gujarat Ayurved University, Jamnagar, three years experience in Ayurvedic Systems of Medicines on a dispensary or a hospital run by Ayurvedic system and possess adequate knowledge in Sanskrit, Gujarati and Hindi."

According to petitioner, he fulfills all the above mentioned criteria and petitioner is also

satisfying the working experience of more than three years i.e. how he was called in interview and selected by the respondent Committee.

The Affidavit in reply is filed by one Mr. R.D.Patel, Assistant Director, Indian System of Medicine and Homeopathy, Gandhinagar raising the contention that petitioner is not satisfying the required qualification of having three years experience as Ayurved Practitioner in Ayurvedic Hospital or Dispensary.

According to respondent, the period of internship can not be considered as period of experience, as it is a part of study and experience gained after award of degree can only be taken into consideration for purpose of calculation of experience.

The last date of receipt of application was 31/7/2006 and hence, petitioner was having actual experience as Ayurved Practitioner was from 1/1/2005 to 31/7/2006 i.e. only one and a half year. But respondent no. 3 and 4 had scrutinized the application of the petitioner and others and they had favoured petitioner by illegally taking into consideration the period of internship as experience.

The approval was granted on 4/5/2007 as a Resident Medical Officer, because respondent no. 2 was not aware that petitioner did not possess require experience, but as stated earlier, it came to the

notice of respondent no. 2 when certain person had intimated it to respondent no. 1. This information and details furnished by such people was verified by respondent no. 2 and was found true.

Therefore, the termination order passed on 4/7/2007, cancelling the approval granted on 4/5/2007. The application of petitioner was scrutinized by respondent no. 3 and 4 with malafide intention in favour of the petitioner as earlier experience prior to receiving the award of degree can not be taken into consideration.

Therefore, decision, which has been taken by respondent no. 2 is correct and based on regulation. The respondent relied upon the Rule which is at page R-I which is quoted as under:

4. Duration of Course:

"The period of internship will be of 12 months in case of total duration of course of study is covered under 4½ years. In case of 12 months internship training, the six months of training be provided for clinical training under various departments. The State/University desiring to continue 6 months internship may adopt Third Professional Course of 24 months so that total duration of course including internship will be of 5½ years.

The first 18 months shall be occupied in the

study of the non clinical subjects. No student shall be permitted to appear in Third professional examination until he/she has passed in all the Second Professional subjects.

5. DEGREE TO BE AWARDED

Ayurvedacharya (Bachelor of Ayurvedic Medicine and Surgery).

The candidate shall be awarded Ayurvedacharya (Bachelor of Ayurvedic Medicine and Surgery) degree after completion of prescribed courses of study extending over the prescribed period and passing the final examination and satisfactorily completion of six months/one year compulsory internship after the final examination."

The respondent has produced original application made by the petitioner as R-2, where details of experience are given by the petitioner.

The respondent no. 3 has filed affidavit in rejoinder against the affidavit in reply filed by respondent no. 1, denying the allegation made by respondent no. 1 and pointed out that this scrutinizes were made independently without favour of petitioner and according to qualification possess by the petitioner. His application was considered and he was called for interview and thereafter, Committee has selected him.

Therefore, according to respondent no. 3, prior

interview, all the papers were placed before Selection Committee for scrutiny. Therefore, allegations made are denied by the respondent no. 3.

Learned advocate Mr. Nanavati has mentioned this all details as referred above in petition. The question is to be examined by this Court that period before receiving the degree or award of degree can be considered for the experience or not. Except that there is no other question is to be examined by this Court.

For that relevant Rule of minimum Standards and Curriculum for Under Graduate Education in Ayurved, item no. 4 – duration of Course and item no. 5 – Degree to be awarded, which are quoted as under:

“i. Pre Ayurved Course – 2/1 years

ii. Degree Course – 5 years

(a) I Professional – 18 months

(b) II Professional – 18 months

(c) III Professional – 18 months

(d) Internship – 12 months

The period of internship will be of 12 months in case of total duration of course of study is covered under 4+ years. In case of 12 months internship training the six months of training be provided for clinical training under various departments. The State/University desiring to continue six months internship may adopt Third Professional Course of 24

months so that total duration of course including internship will be of 5+ years. The first 18 months shall be occupied in the study of the nonclinical subjects. No student shall be permitted to appear in Third Professional examination until he/she has passed in all the Second Professional subjects.

5. Degree to be Awarded:

Ayurvedacharya (Bachelor of Ayurvedic Medicine and Surgery) – The candidate shall be awarded Ayurvedacharya (Bachelor of Ayurvedic and Surgery) degree after completion of prescribed courses of study extending over the prescribed period and passing the final examination and satisfactorily completion of six months/one year compulsory internship after the final examination."

One question asked by this Court to learned advocate Mr. Nanavati that in absence of internship as specified under Rules whether petitioner is entitled to receive award of degree or not. The answer is no, meaning thereby that internship is a part of study for getting degree in Ayurved or for getting award of degree in Ayurved.

Therefore, looking to the advertisement, which is at page 51, this Rules by way of notification dated 24/2/1987, where the qualification for the post of Resident Medical Officer Class II Gujarat Ayurved Services is specified, which is at page 52, item B, quoted as under:

“(b) Possess a degree in Ayurved from Ayurved University, Jamnagar or any other University established by law in India, and three years experience in Ayurvedic System of Medicine of a dispensary or a hospital run on Ayurvedic System.”

Therefore, after receiving a degree in Ayurved, three years experience in Ayurved System is necessary. If this may not be considered to be correct interpretation or required necessity consequential then while studying in the course of Ayurved, petitioner can worked for gaining the experience in Ayurved System of Medicine. That experience can not be counted, simple reason is that for having experience or to receiving experience, a particular qualification is must, therefore, a person is not qualified in Ayurved System and having experience prior to have degree can not be included in three years experience because there was no provision to count prior experience as at that time petitioner was not qualified to gain experience. Any stage of experience prior to degree in Ayurved has no meaning as qualification prescribed in Rules and Advertisement.

The person, who become qualified after possessing the degree in Ayurved should count experience of three years obtained after receiving degree in Ayurved as suggested in the qualification from Ayurved System of Medicine on Dispensary or Hospital run by Ayurved System. Meaning thereby, in the post of the Resident

Medical Officer, a person, who required having three years experience after receiving degree in Ayurved System from Ayurved University either Jamnagar or other University.

The learned advocate Mr. Nanavati submits that Application form and certificate were scrutinized by Selection Committee but not objected the experience part. The affidavit in reply of respondent no. 1 gave clear answer to the contentions of Mr. Nanavati. Though this allegations are denied by Respondent no. 3 in its rejoinder. The mistake or error which is bonafide committed by Authority can be corrected in a subsequent stage in accordance with law. But person who is not qualified according to requisite qualification as per rules not to be allowed to remain continue in service otherwise those who are eligible and qualified as per rules remained without consideration and Appointment. The decision which relied by learned advocate Mr. Nanavati refer in Body of petition at page 17 para 10-2 where citation of said decision is not mentioned. Merely, observation quoted from the decision in case of Commissioner of Higher Education Vs. Prajapati Amrutlal Somabhai. I have considered the said observation but it is not applicable to facts of this case simple reason is mentioned by Respondent no. 1 in his affidavit in reply. As it was mistake on their part which brought to notice by some person then it verify found to be true. Therefore, Selection Committee and Respondent no. 3 not brought to notice said defect to Respondent

no. 1 which impliedly favour to petitioner. Therefore, three years independent experience as Ayurved Practitioner is necessary not the experience gain prior to become Ayurved Practitioner. Similarly student of LLB having experience while studying in Chamber of Advocate but for appointment as Civil Judge experience required as Advocate means from the date on which sanad obtained by him. Prior experience can not be counted. There is vast difference in having experience after become Ayurved Practitioner and prior experience as student of B.A.M.S. Therefore, rules required experience of three years after obtaining award of degree in Ayurved. Therefore, submissions of learned advocate Mr. Nanavati not accepted and same is rejected.

Therefore, the decision, which has been taken by respondent no. 2 cancelled the approval, which resulted in cancelling the appointment is legal and valid. Therefore, there is no error committed by the State authority or there is no illegality committed by respondent.

In respect to the contention raised by learned advocate Mr. Nanavati that one month notice as per appointment order is necessary or principle of natural justice is not followed, the show cause notice was served to the petitioner prior cancelling the order of appointment, reasons were disclosed to petitioner. The terms, which relied by learned advocate Mr.

Nanavati at item no. 12, page 37, which related to normal termination during the course of duty, which required one month notice suggest in normal contingency and normal factor, but not include in particular case of such termination when petitioner is not possessing requisite qualification as prescribed in the advertisement, for that it is not necessary to follow item no. 12, page 37. Therefore, that contention is rejected.

According to my opinion, decision given by respondent no. 2 is perfectly justified and termination order is legal and valid. Therefore, there is no substance in the present petition. Hence, present petition is dismissed.

Ad interim relief granted by this Court stand vacated. Notice discharge.

(H.K.RATHOD, J)

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